Legal update

Setting benchmarks: Alberta’s Carbon Competitiveness Incentive Regulation

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Energy
Environmental

The Alberta government recently announced that the Carbon Competitiveness Incentive Regulation (CCIR) will replace the 10-year-old Specified Gas Emitters Regulation (SGER) on January 1, 2018, and be phased in over three years. Like the SGER, the CCIR will apply to facilities that emit 100,000 tonnes or more of greenhouse gasses (GHGs) in 2003 or in any subsequent year. There were 113 facilities in Alberta that emitted more than 100,000 tonnes in 2015.

The government has not yet released the actual CCIR but has published a CCIR Fact Sheet and other materials that outline some of the new regulation's features.

The CCIR is designed to provide incentives to large emitters to reduce GHG emissions by improving performance. It will be based on GHG emission benchmarks (also called output-based allocations) for various industries, with facilities that emit fewer GHGs than their peers in their industry being rewarded and those that emit more being penalized.

Benchmarks

Product-based benchmarks, such as emissions per barrel of oil produced or kilowatt of electricity generated, are to be set for industries where there is more than one regulated facility producing a specific product. Generally, product-based benchmarks are expected to be set on a “best-in-class” basis or at 80% of the average GHG emissions intensity of producing the product in an industry. If a facility can produce the product with fewer emissions than best-in-class or 80% of the average, then it will be entitled to generate emission performance credits it can sell or use at other facilities or in other years.

For example, if the product-based benchmark for widgets is set at 80% of the average of all widget producers in Alberta and if a widget producer can make a widget emitting only 70% of the average GHGs that its competitors emit, it will have not only met the benchmark but will also be able to create credits.

For some industries where there is a risk that emitters will close their Alberta facilities and move to a less regulated jurisdiction (called carbon leakage), the benchmark may be set at a less stringent level, such as 90% or 100% of the industry average emissions intensity. How the government will determine which industries are at risk to carbon leakage has not been disclosed.

If there is only one regulated facility producing a specific product then facility-specific benchmarks will be used. A facility-specific benchmark is where the facility's actual emissions are used to set the benchmark rather than an industry average.

Setting benchmarks is challenging, especially if there is a lack of data or where the emissions profile from a large emitter is complex. It is likely that the benchmarks will not be perfect and will need to be adjusted over time. For
instance, interim facility-specific benchmarks are to be set for several industrial sectors, including the bitumen upgrading, natural gas processing and multi-product chemical sectors. The interim facility-specific benchmarks are 80% of the facility’s average emissions intensity for these industries. It is expected that product-based benchmarks will eventually replace the facility-specific benchmark for these industries.

How emitters are grouped is also challenging. For instance, grouping all thermal oil sands projects together does not recognize that the technology used (i.e., SAGD vs. cyclic steam) may be fundamentally different from one facility to the next.

An interim assessment of all benchmarks will be undertaken in 2020 and a full review in 2022.

**Erosion of free emissions**

Emissions up to the benchmark are essentially free to a producer in that although they are measured and reported, there is no compliance obligation. For instance, if the benchmark for a product is 80% of the industry average emissions intensity for that product, then the emissions to produce that product up to that benchmark are not subject to any compliance obligation. There will be, however, a tightening of these “free” emissions at a rate of 1% per year starting in 2020. This means that if a benchmark is at 80% in 2018, it will be 79% in 2020, 78% in 2021, and so on.

**Compliance**

The CCIR compliance mechanisms are similar to those as under the SGER, including on-site actual emission reductions, the acquisition and retirement of emission performance credits or offset credits, and payment into the Climate Change and Emissions Management Fund.

However, credit usage will be limited and depend on the age or vintage of the credits. The limit on using credits to meet a compliance obligation will be 50% in 2018 and rise to 60% in 2022.

<table>
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<tr>
<th>Credit Limit</th>
<th>2018</th>
<th>2019</th>
<th>2021</th>
<th>2022</th>
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<tr>
<td>New and Old Credits</td>
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<td>New Credits</td>
<td>10%</td>
<td>15%</td>
<td>20%</td>
<td>60%</td>
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</tbody>
</table>

“New” credits are ones created in 2017 or later. They will have an eight-year shelf life. Pre-2017 credits will begin to expire over time. Credits created in 2014 and before will expire in 2020, and 2015 and 2016 credits will expire in 2021.

The compliance obligations will also be phased in over three years. According to the guidance documents published to date on the CCIR, in 2018 a regulated facility will be required to meet 50% of the CCIR, in 2018 75% and in 2020 100%. How exactly this will work is not clear.

**Forecasting and reporting**

Very large emitters will also have quarterly reporting and annual forecasting requirements. Specifically, facilities that emit 1 million tonnes (or 1 mega tonne) or more of GHGs will have to produce a forecast by November 30 of each year of their anticipated emissions in the next year and provide quarterly emissions reports.

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